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FILE NUMBER 46158-003

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July 27, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

NOTICE OF EX PARTE PRESENTATION

Re: In the Matter of the Petition of the Inmate Calling Services
Providers Task Force for Declaratory Ruling; RM 8181

Dear Mr. Caton:

This is to inform the Commission that copies of the enclosed ex parte letters were sent to the Commission's Staff as addressed.

Sincerely,



Albert H. Kramer

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Olga Madruga-Forti
Chief - Domestic Services Branch
Federal Communications Commission
2025 M Street, N.W.
Room 6008
Washington, D.C. 20554

NOTICE OF EX PARTE PRESENTATION

Re: In the Matter of the Petition of the Inmate Calling Services
Providers Task Force for Declaratory Ruling; RM 8181

Dear Ms. Madruga-Forti:

During the course of the above-referenced proceeding, certain of the Bell Operating Companies ("BOCs") have argued that the grant of the Inmate Calling Services Providers Task Force ("ICSPTF") petition would place the BOCs at a competitive disadvantage in the inmate calling services market because of the MFJ prohibition against BOC provision of interLATA services. That contention, we believe, is entirely false, particularly in light of the fact that everyone agrees that BOC and independent inmate calling systems are currently competitive despite the MFJ prohibition.

To help explain why that contention is false, we have enclosed a copy of a letter that Ameritech sent to the Antitrust Division of the Department of Justice ("DOJ") in 1988. In the letter, Ameritech explained how it intended to respond to the "competitive challenges" it faced from independent payphone providers and from providers of inmate calling systems, who are able to offer interLATA services, in light of the MFJ prohibition against BOC interLATA services. Ameritech explained that it was its intention to respond to the independent providers by "routing dial "0" interLATA calls to a carrier selected by the owner of the premises" (i.e. the inmate facility). That carrier would pay commissions to the premises owner for the interLATA traffic that it carried, while Ameritech would pay commissions on the intraLATA traffic that it carried.

The letter states that Ameritech would be available to assist the premises owner in solicitation of bids from the interLATA carrier, or in presenting to the premises owners packaged "complementary bids" with IXCs meeting the applicable participation criteria. Ameritech also states that it will also offer to receive the commissions from the interLATA

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carrier and pass them on to the premises owner so that the premises owner would "have the convenience of a single check."

It is apparent from this procedure, as described by Ameritech, that the BOCs are capable of competing quite effectively against independent providers despite the MFJ interLATA prohibition. As Ameritech's letter makes clear, the MFJ prohibition does not prevent the facility administrator from having available the same revenue stream -- commissions on both interLATA and intraLATA calls -- regardless of whether the facility administrator chooses a BOC system or an independent provider system. Further, under the procedures outlined by Ameritech, the facility administrator has virtually the same "one stop shopping" regardless of whether the facility administrator chooses the BOC or an independent provider. From the viewpoint of the facility administrator, therefore, independent and BOC systems are competitively equivalent.¹

ICSPTF believes that the procedures described in Ameritech's letter are in fact the procedures that all the BOCs currently use in the marketing of inmate calling systems. None of these procedures would be affected by grant of the ICSPTF petition. Thus, the grant of the ICSPTF petition would impose no competitive disadvantages on the BOCs -- except to deprive them of the cross-subsidy from other ratepayer funds that the BOCs currently enjoy in defiance of longstanding Commission policy.

Sincerely,



Albert H. Kramer

Enclosure

¹ In fact, subsequent to Ameritech's letter, Judge Greene ordered the BOCs to allow premises owners to select the interLATA carrier for traffic originating from BOC payphones. See United States v. Western Electric Company, 698 F.Supp. 348 (1988).



AMERICAN INFORMATION TECHNOLOGY

THOMAS P. HESTER
Senior Vice President and
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30 South Wacker Drive
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June 20, 1988

Nancy C. Garrison, Esq.
Assistant Chief
Communications & Finance Section
U. S. Department of Justice
555 Fourth Street, N.W.
Room 8106
Washington, D.C. 20001

Re: Change in Equal Access Procedures for the Routing of
Dial "0" Calls from Some Ameritech Public Telephones
(U.S. v. Western Electric, No. 81-0192).

Dear Ms. Garrison:

In accordance with the requirements of the District Court's order of March 6, 1985, Ameritech hereby notifies the Department of a change in its procedures for the routing of calls dialed without access codes from some Ameritech public telephones.

Since divestiture, dial "0" calls without access codes have been sent to American Telephone and Telegraph Company ("AT&T") exclusively. On January 29, 1988, the Department moved the Court for an order that would, inter alia, require the Bell Operating Companies ("BOCs") to file within sixty days plans that would end this routing. The Court, however, has not yet ruled upon the Department's motion.

Since 1984, the Ameritech companies have advocated before the Department, the Court, and the Federal Communications Commission ("FCC") that routing to AT&T should be replaced by Ameritech's plan to route calls by database inquiry according to the carrier preference of the party who will pay for each credit card, collect, or third-number call. However, the technological capability of doing so is not yet available. Moreover, neither the Court nor the FCC has yet approved the billed party preference plan or, indeed, indicated any inclination to approve any other plan to change the present routing.

While these issues have remained undecided, the owners and proprietors of premises on which public telephones are located have become increasingly aware of alternatives to the public telephones provided by the BOCs and other local exchange carriers ("LECs"). AT&T telephones and other private (i.e., non-BOC or non-LEC) public telephones are being employed to replace BOC

public telephones. Such public telephones frequently employ automatic dialing to direct all calls (whether or not dialed with any carrier's access code) to a carrier selected by the provider of the telephone or the premises owner. Often this carrier is the type of reseller known as an Alternate Operator Service ("AOS") provider. Under these arrangements, the owners and proprietors of public telephone premises are, as a practical matter, controlling the routing of both intraLATA and interLATA calls from their premises by virtue of their ability to select the public telephone provider. These developments have already been described to the Department in NYNEX Corporation's letter dated November 2, 1987, and have since been discussed extensively in the filings before the Court in response to the Department's January 29 motion and in current inquiries by the FCC and state commissions into the practices of AOS carriers.

Another recent development is that Ameritech and other BOCs are making available the data to permit validation of collect, third-number, and BOC credit card calls by all carriers. On May 19, 1988, U S West Service Link announced that it had loaded the data of Ameritech, Southwestern Bell, and U S West and that it was offering validation service on calls to be billed in the twenty-four states served by those three BOC regions. This makes the routing of calls without access codes to non-AT&T carriers a more workable option than before.

In the wake of these developments, Ameritech, like NYNEX, proposes to respond to competitive challenges to its public telephones by routing dial "0" interLATA calls to a carrier selected by the owner of the premises. (This would apply only to interLATA calls dialed without access codes; there would be no change in the routing of 10XXX, 950-XXXX, and other access codes.) In ascertaining the premises owner's choice of interLATA carrier, the Ameritech companies will not be engaged in providing interLATA services or selecting the interLATA carrier. The Ameritech companies will present a bid or proposal relating to the installation and maintenance of the telephone sets and the carriage of local and intraLATA toll traffic and will invite complementary bids from interLATA carriers who are in general agreement with the usual participation assumptions discussed below.

Bids will be invited from interLATA carriers as directed by the premises owners and will be in accordance with the equal access and non-discrimination requirements of the decree. Whenever the premises owner has not indicated any particular interLATA carriers to be solicited, the Ameritech companies will solicit complementary bids from all interLATA carriers who concur in the basis for participation and who might reasonably be expected to have an interest in the BOC public telephones in question. On the other hand, the Ameritech companies do not believe they are required to reveal one carrier's sales leads to the other carriers or to expand the list of bidding carriers beyond the scope desired by the premises owner. Thus, where an

Ameritech company is approached by a particular interLATA carrier with respect to a particular premises, the Ameritech company would submit its intraLATA bid to be complementary only with that carrier's proposal. Similarly, if a premises owner states that he has already selected an interLATA carrier, other carriers would not be notified.

Of course, the Ameritech companies would not seek to hinder any direct contacts between premises owners and interLATA carriers and would not try to prevent carriers from simultaneously bidding with other public telephone providers.

Commissions on interLATA calls paid to the premises owner by the selected interLATA carrier would belong entirely to the premises owner. Upon request, the Ameritech company would receive the commissions from the interLATA carrier and pass them on to the premises owner so that the premises owner may have the convenience of a single check, accounting separately for interLATA and intraLATA commissions.

Ending the exclusive routing of public telephone calls to AT&T will further both the letter and the spirit of the equal access and non-discrimination requirements of the decree. At the same time, those requirements would not be inconsistent with reasonable guidelines stating the normal basis for participation by interLATA carriers in these complementary bidding situations. The guideline proposed by the Ameritech companies is described in the attachment to this letter.

Some of the items in the attachment deal with legal and tariff questions and others relate to the quality of service available from Ameritech public telephones. Each Ameritech company's corporate identity and the Bell trademark appear on Ameritech public telephones, and end users would be misled if services from those telephones were not of the quality and value they have come to associate with those insignia. Furthermore, the end user would be confused and frustrated by any wide differences in using the same telephone for interLATA and intraLATA purposes, damaging the competitive position of the Ameritech public telephone as compared to those of other providers. Thus, for example, the Ameritech companies expect that carriers will not block "1+" coin-sent-paid calls.

The assumptions in the attachment are intended to apply to most situations, but would be subject to adjustment to meet the reasonable needs of premises owners in special circumstances. (Prisons, for example, usually forbid credit card and third-number calling by inmates.) Nevertheless, where a premises owner unreasonably insists upon substandard service, the Ameritech companies reserve the option to remove their public telephones from consideration. In addition, it should be noted that in the FCC's present inquiry into the operations of AOS carriers, many of the carriers have subscribed to a new Code of Responsibilities and have announced other improvements in their services, leading

one to expect that most parties who wish to be associated with BOC public telephones will elect to participate on the basis proposed by Ameritech. Any who do not will of course still be able to compete for the premises owner's selection by partnering with non-BOC providers of public telephones, which is just what they have been doing all along while BOC public telephones were being routed only to AT&T.

These procedures are intended to apply to Ameritech public telephones subject to the immediate pressures of competition. Ameritech still supports its billed-party-preference plan for other Ameritech public telephones, and most likely will not make any alternative or interim proposal before the Court has acted on the Department's January 29 motion. However, Ameritech does propose that any arrangements entered into as described in this letter be honored for whatever time period is agreed upon between the premises owner and the interLATA carrier, even if some other routing plan should be adopted or required in the meantime. For example, if an auction plan such as recently proposed by the GTE telephone companies were imposed by the Court or the FCC, Ameritech would argue that any premises owners who had previously chosen a carrier would be exempt until their agreement with the interLATA carrier had expired.

Even in advocating its billed party preference plan, Ameritech always has said that any of the alternatives, including carrier choice by the premises owner, would meet the requirements of the decree. Thus the premises owner choice plan described in this letter should not require a waiver or any action by the Department, and the letter has been sent for the purpose of complying with the Court's order requiring notice of changes. That order requires thirty days' notice unless the Department agrees to a shorter period. In view of the Department's efforts to end the default of public telephone calls to AT&T as soon as possible, the present proposal -- assuming that the Department has no objections to its merits -- would appear to be an appropriate instance for applying a shorter period. Accordingly, Ameritech requests the Department to advise Ameritech that it may proceed with the proposal before the thirty-day period has elapsed. Otherwise, the amendment will be put into effect after the thirtieth day.

Very truly yours,

Thomas P. Herten
/anb

cc: Luin Fitch, Esq.